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PART III

Notifications by High Court, Advertisement, Notices and Change of Name etc.

HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM

Notification

The 22nd February, 2021

Directions to the builders/promoters with regard to advertisements of real estate Projects

No. 3/RERA GGM Directions 2021.— In exercise of the power conferred by section 37 of the Real Estate (Regulation and Development) Act, 2016 the Haryana Real Estate Regulatory Authority, Gurugram having considered it necessary to provide necessary guidance to promoters of real estate projects and to media organizations and advertising industry intermediaries regarding appropriate nature of compliance for advertisement of RERA registered project, the authority is hereby prescribing the appropriate compliance to be ensured while advertising the registered real estate projects.

"The Haryana Real Estate Regulatory Authority, Gurugram direction to the builders/ promoters with regard to advertisement of real estate project"

1. Short Title

These directions shall be called the "Haryana Real Estate Regulatory Authority, Gurugram directions to the builders/promoters with regard to advertisements of real estate projects."

2. Definitions

- (i) "Act" means the Real Estate (Regulation and Development) Act, 2016.
- (ii) "Authority" means the Haryana Real Estate Regulatory Authority, Gurugram established under sub-section (1) of section 20 of the Act.
- (iii) "Advertisement" shall have the same meaning as assigned to it under section 2(b) of the Act.

3. Frequent violations committed by promoters while issuing advertisement

Upon scrutiny of various advertisements of the real estate projects, it has been observed that the advertisements issued by the promoter are either not in compliance with the definition of "advertisement" as provided under section 2(b) or are in complete contravention of sections 3, 11(2) and 12 of the Act *ibid*. Following contraventions have been observed frequently and repeatedly:

- i. In newspaper-paper and print media, RERA registration number is properly not visible due to small font size and light font color.
- ii. The advertisement does not contain RERA registration number and website address of the authority and the onus of such omission is put upon the advertising agency.
- iii. Some fake promises are made in the advertisement to allure the innocent buyers.
- iv. Claims such as mentioning in the advertisement that purchase decisions made on the basis of advertisement shall not be liable for consequences under the RERA, Act.

4. General Guidelines

- I. The Real Estate (Regulation and Development) Act, 2016 specifically provides for the definition of the term "Advertisement", therefore leaving no scope for ambiguity. In this regard Section 2(b) of the Act ibid provides that:

"advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

- II. The definition of advertisement as given in section 2(b) is in two parts.

- i. The first part of the definition provides that advertisement means any document described or issued as advertisement through any medium. It means that 'advertisement' may be through any medium such as print, audio, video or any other medium of representation.
- ii. The second part of the definition declares as what is also included in the definition of advertisement. The advertisement includes:

- a. any notice;
- b. any circular; or
- c. other documents; or
- d. publicity in any form.

The notice or circular or other documents or publicity shall be with a view to:

- a. informing persons about a real estate project; or
- b. offering for sale of a plot, building or apartment; or
- c. inviting persons to purchase in any manner such plot, building or apartment; or
- d. to make advances or deposits for such purposes.

- iii. The model apartment, plot or building is also an advertisement as it is covered in the second part of the definition i.e. publicity in any form. Model apartment, plot or building is presented to the public with a view to:

- a. inform persons about a real estate project; or
- b. offer for sale of a plot, building or apartment; or
- c. invite persons to purchase in any manner such plot, building or apartment; or (iv) to make advances or deposits for such purposes.

- III. The term "Advertisement" is not confined to advertisement in print or visual media but extends to any document issued for the purpose of publicity to make the public buy the building, apartment or plot or to make advances or deposits for the purpose. The definition is awfully extensive and almost all kinds of advertisement or promotion activity would fall within it, including any medium adopted for imploring, soliciting and asking for sale, including social media, SMS, email, etc. Further it is not only restricted to offer(s) for the sale of a plot, building or apartment, or for inviting persons to make purchases, but also includes information to persons about a real estate project. Therefore, any kind of information about the real estate project would amount to advertisement.

5. Relevant provisions under RERA Act, 2016 dealing with restrictions and direction for issuing "advertisement"

- I. Section 3 of the Real Estate (Regulation and Development) Act, 2016 restricts that no promoter shall advertise, book, market or sale any plot apartment or building without registering the real estate project with this Authority. It is therefore essential that every project should be registered with this Authority before it is advertised by any promoter. Not-mentioning the registration number issued by the Authority therefore leads to lack of transparency, and could cause confusion in the mind of public as well as prospective purchasers about whether the project is registered with this the Authority or not.

Section 3 the Real Estate (Regulation and Development) Act, 2016 provides as under:

"No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this

Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration."

- II. Further, as provided under section 11 of the Real Estate (Regulation and Development) Act, 2016, website address of Authority is required to be mentioned in every advertisement. Section 11(2) of the Real Estate (Regulation and Development) Act, 2016 states as under:

"The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto."

- III. Also, as provided under section 12 of the Real Estate (Regulation and Development) Act, 2016 it shall be the promoter's obligation to ensure veracity of the advertisement or the prospects. Advertisement is relevant for section 12, which provides:

12. Obligations of promoter regarding veracity of the advertisement or prospectus.—

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

6. Guidelines for necessary compliance by promoters

In order provide necessary guidance to promoters of real estate projects and to media organizations and advertising industry intermediaries regarding appropriate nature of compliance for advertisement of RERA registered projects, the Authority is hereby prescribing the appropriate compliance to be ensured while advertising the registered real estate projects through various mediums as follows;

- i. **Newspaper - in paper print and digital media:** - Advertisement in newspaper either in paper print or in e-paper format or website advertisement of RERA Registered projects shall contain the address of the HARERA, Gurugram website www.haryanarera.gov.in and the RERA registration number as indicated in registration certificate issued by the Authority is to be clearly mentioned e.g. **RC/REP/HARERA/ GGM/415/147 /2020/31.**
- ii. **Brochures and leaflets:** - All paper print brochures and leaflets shall also contain Authority website address and project registration number as applicable for paper print newspaper.
- iii. **Outdoor Publicity:** - Large size outdoor publicity billboards and hoardings must contain authority website address and RERA registration number as applicable for printed newspaper in a way which is easily readable with bare eyes by viewer.
- iv. **Audio-Visual Media:** Every audio visual media or only Audio announcements on radio shall mention abridged RERA Registration number in a clearly audible manner along with mention of the Authority's website address. This will apply to all audio-visual media like radio, TV, video clips, audio clips, media streaming, digital media content etc.
- v. All promoters of a real estate project shall ensure that above directions are adhered to in full, so as to avoid non-compliance which may lead to regulatory action under the RERA Act, Rules and Regulations.

While issuing the advertisement through any of the aforesaid medium, the promoter shall ensure that:

- i. RERA registration number and website address of the Authority should be written in a legitimate manner in BOLD LETTERS and on the top right side of the advertisement.
- ii. Advertisements published for inviting buyers for the purchase of apartment/plot, shall be truthful and based on the facts as have been revealed to the authority and strictly no exaggeration or misinterpretation which may create a biased impression in the minds of the buyers about the property they are interested to buy.
- iii. A copy of the prospectus or brochure or any pamphlet *vide* which an information relating to the project is sought to be conveyed to the allottees of the apartment or prospective buyers of the apartment/plots shall be submitted to the Authority in its office at New PWD Rest House, Civil Lines, Gurugram at least 7 days before print/circulate.
- iv. A specimen of advertisement at annexure "A" may be referred.

7. Liability for violation/noncompliance of section 3, 11(2), 12 read/with section 2(b) of the Real Estate (Regulation and Development) Act, 2016

- i. For any violation or non-compliance of the provisions of the Real Estate (Regulation and Development) Act, 2016 relevant to issuance of advertisement i.e section 3, 11(2), 12 read/with section 2(b) of the Act *ibid* the promoter shall be held solely liable/responsibility and penal proceedings shall be initiated under section 59, 61 and/or 63 of the Act.
- ii. The onus of violation will not be allowed to be shifted on the advertising or other agency. Such agencies are mere executors of the work assigned to them by the promoter. The obligations/duties for compliance of the provisions of the RERA Act, 2016 is cast upon the promoter only.

(Sd.) ... ,

Secretary,

for Haryana Real Estate Regulatory Authority, Gurugram.

Annexure-A

Directions to the Promoters
builders with regard to
advertisement of real estate projects.

RERA Registration. No.
RC/REP/HARERA/GGM/abc/def/ghij/kl

Promoter: (Name of the promoter)
Project: (Name of the Project)

Advertisement body

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